THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

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WRIT PETITION NO : 4314 of 2005

Dated: 19.10.2005

Between:

Burle Kamalamma W/o Late Bure Ramulu,
Khammam, khammam District

..... PETITIONER

AND

The District Collector, Khammam District,

Khammam and another.

… **RESPONDENTS**

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THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

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WRIT PETITION NO. 4314 OF 2005

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ORDER:

This writ petition has been filed by the petitioner with a prayer to issue a writ, order or direction, more particularly in the nature of Mandamus declaring the action of the respondents in laying 100 feet bypass road over the land of the petitioner to an extent of Ac.0.16½ gunatas in Sy.No.280/2 of Khanapuram Haveli village, Khammam Urban Mandal, Khammam District as arbitrary and illegal.

2. The case of the petitioner, as disclosed from the affidavit filed in support of the writ petition, in brief, is:

The husband of the petitioner purchased the land in Sy.No.280/2f of Khanapuram Haveli village, Khammam Urban Mandal, Khammam District through a registered sale deed vide document No.183/1966. Her husband sold a part of the land and retained about Ac.0.16½ guntas. The Government issued notification under Section 4(1) of the Land Acquisition Act (for short "the Act") in the year 1997 proposing to acquire the land for laying 100 feet bypass road. Enquiry under Section 5-A of the Act was conducted and declaration was also issued under Section 6 of the Act. It is the case of the petitioner that possession of the land has been taken without invoking the urgency clause before passing the award. Since no action has been taken in pursuance of Section 6 declaration, the petitioner has chosen to approach this Court for the relief stated supra.

3. The respondent filed a counter-affidavit. C.Chandrasekhar Reddy has sworn to the counter-affidavit. The fact of taking possession of the land for formation of 100 feet bypass road is not contraverted by the respondent. It is stated in the counter-affidavit that the enquiry under Section 5-A of the Act has been conducted during the year 1998 and further proceedings under the Act could not be completed. I deem it appropriate to refer to the relevant portion in the counter-affidavit and it is thus:

> "The owners of the land for the rest of the land has to be ascertained. Smt.Bure Kamalamma W/O Burle Ramulu has filed the present writ petition questioning the action of the respondent in laying 100 feet bypass road over the land of the petitioner to an extent of AC.0.16 ½ guntas in Sy.No. 280/21 of Khanapuram Haveli village, Khammam Urban Mandal, Khammam District, without duly acquiring the same and without paying compensation as illegal and arbitrary. As per the report of the Surveyor an extent of 1540 square yards in Sy.N0. 280 belonging to Burle Ramulu (husband of the petitioner) is coming under acquisition. In this case the Award could not be passed so far due to administrative delay. As the possession of the land was already taken by the Commissioner of Municipality, Khammam on 27.10.1986 and the road was already formed in the year 1986 itself, the District Collector, has addressed letters to the Government on 25.06.2004 and 18.10.2004 requesting the Government to permit to dispose of the case as per Draft Notification and Draft Declaration already published duly taking market value as prevailing at that time and paying thereon other statutory benefits as admissible under the Land Acquisiton Act for the delay in passing the Award and the orders of the Government are

awaited.”

4. Heard learned counsel for the petitioner and the learned Government Pleader for Land Acquisition, appearing for the respondents.

5. Learned counsel for the petitioner submits that the respondents, having taken possession of the land, have not passed any award so far, and therefore, fresh notification is required to be issued. In support his submission, learned counsel placed reliance on the decision of this Court in the case of ***M.Sowbhagyamma (died) and others Vs. Land Acquisition Officer, Hyderabad*** .

6. Learned Government Pleader for Land Acquisition submits that the award could not be passed because of some administrative delays, and therefore, the question of issuing fresh notification does not arise.

7. It is no more in dispute that the possession of the land has been taken over for laying 100 feet bypass road. It is not the case of the respondents that the possession has been taken by invoking urgency clause. Under Section 11-A of the Act, an award is required to be passed within a period of two years. It is apposite to make a reference to the provisions of Section 11-A of the Act, which reads as follows:

> 11-A : Period within which an award shall be made: The Collector shall make an Award under Section 11 within a period of two years from the date of publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:
>
> Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the Award shall be made within a period of two years from such commencement.
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> Explanation : In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court, shall be excluded.”

8. A plain reading of the above provision makes it clear that the Collector is under obligation to make an Award under Section 11 of the Act within a period of two years from the date of publication of declaration and if he fails to make an award within that period, the entire proceedings for the acquisition of the land shall lapse. Section 11-A of the Act, however, saves the land from being lapsed, in a case where the declaration has been made prior to the commencement of the Land Acquisition

(Amendment) Act. The award shall be made within two years from such commencement and in computing the period of two years, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court, shall be excluded.

9. The Supreme Court, in the case of ***Yusufbhai Noormohmed Vs.State of Gujarat*** held that Section 11-A is intended to confer a benefit on the landholder whose land is acquired and the benefit is that the award must be made within a period of two years of the declaration, failing which the acquisition proceedings would lapse and the land would revert to the landholder.

10. In the case on hand, possession of the land was taken by the respondent on 27.10.1986. Section 4(1) notification was issued on 05.12.1997. Nearly 11 years have been elapsed after taking possession of the land. Despite taking possession of the land, no award has been passed as on this day. Under Section 11-A of the Act, an award is required to be passed within a period of two years. Consequences of non-passing of the award within a period of two years is explicit from the provisions of Section 11-A of the Act. Since the road has been laid on the land, it is not desirable to pass an order directing the respondents to deliver back the possession of the land to the petitioners. The only alternative is to direct the respondents to initiate the proceedings for acquisition of the land afresh and pass orders at the earliest.

11. Accordingly, the writ petition is disposed of directing the respondents to issue notification under Section 4(1) of the Act once again afresh, and pass the award as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order. No costs.

19.10.2005

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